

United States District Court  
Southern District of Texas  
FILED Appendix A

DEC 28 2015

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
Southern DIVISION

David C. Bradley, Clerk of Court

Cortez Austin

versus

Food Town Inc

§  
§  
§  
§  
§  
§  
§

4:15 CV 3678  
CIVIL ACTION NO. \_\_\_\_\_

EMPLOYMENT DISCRIMINATION COMPLAINT

1. This action is brought under Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is conferred by Title 42 United States Code, Section § 2000e-5.

2. The Plaintiff is:

Cortez Austin

Address:

19455 Plantation Cove  
lane Katy, TX 77449

County of Residence:

3. The defendant is:

Food Town Inc

Address:

4520 Jones Rd.  
suite 6 Houston, TX 77065

☐ Check here if there are additional defendants. List them on a separate sheet of paper with their complete addresses.

4. The plaintiff has attached to this complaint a copy of the charges filed on 5/21/14 with the Equal Opportunity Commission.

5. On the date of 10/02/15, the plaintiff received a Notice of Right to Sue letter issued by the Equal Employment Opportunity Commission; a copy is attached.

6. Because of the plaintiff's:

- (a) ☒ race
- (b) ☐ color
- (c) ☐ sex
- (d) ☐ religion
- (e) ☐ national origin,

the defendant has:

- (a) ☐ failed to employ the plaintiff
- (b) ☐ terminated the plaintiff's employment
- (c) ☒ failed to promote the plaintiff
- (d) ☐ other: \_\_\_\_\_

7. When and how the defendant has discriminated against the plaintiff:

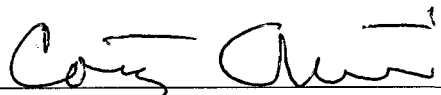
During 05-21-2013 to 05-21-2014  
We were denied job duties such as,  
using the store scanner, and pay raises.

8. The plaintiff requests that the defendant be ordered:

- (a) ☐ to stop discriminating against the plaintiff
- (b) ☐ to employ the plaintiff
- (c) ☐ to re-employ the plaintiff
- (d) ☒ to promote the plaintiff


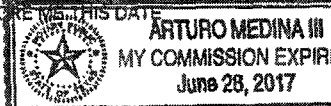


(e) ☐ to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ and that;

(f) ☐ the Court grant other relief, including injunctions, damages, costs and attorney's fees.

  
(Signature of Plaintiff)

Address: 19455 Plantation  
Cove Lane Katy, TX 77449  
Telephone: 832-967-0082

EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: <span style="float: right;">Agency(ies) Charge No(s):</span> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC <span style="float: right;"><b>460-2014-02659</b></span>	
<b>Texas Workforce Commission Civil Rights Division</b> and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) <b>Mr. Cortez Austin</b>		Home Phone (incl. Area Code) <span style="float: right;">Date of Birth</span> (b) (7)(C) Personal Information <span style="float: right;"><b>7-1979</b></span>	
Street Address <b>19455 Plantation Cove, Katy, TX 77449</b>		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>LEWIS FOOD TOWN</b>		No. Employees, Members <span style="float: right;">Phone No. (Include Area Code)</span> <b>500 or More</b> <span style="float: right;"><b>(713) 910-6767</b></span>	
Street Address <b>9520 Jones Road, Houston, TX 77065</b>		City, State and ZIP Code	
Name		No. Employees, Members <span style="float: right;">Phone No. (Include Area Code)</span>	
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest <span style="float: right;">Latest</span> <b>05-21-2013</b> <span style="float: right;"><b>05-21-2014</b></span> <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I began my employment with this employer in January of 2000. I am currently a Stocker. About one year ago Mr. Fernando (Hispanic), 2<sup>nd</sup> Manager, was moved to our store. He replaced a White manager. Also transferred back to our store is Mr. Paulette (White), Store Manager. Mr. Paulette is the individual who initially hired me in 2000.</p> <p>Approximately 3 weeks ago, stockers were informed that everyone must work on Saturdays. Jose (who has been there 17 to 18 years) is not required to do so because of the length of time he has worked for this employer. I was not given that exemption. I have had a set schedule for the past 7 to 8 years. I am off on Tuesday and Saturday. We were also informed that we were required to work 1 night a week. This creates a problem with my caregiving responsibilities. I expressed concerns to Mr. Fernando and Mr. Paulette. But nothing happened. I then complained to Mr. Mitch, the Store Supervisor. He is in charge of the store.</p> <p>In addition to concerns about scheduling, I believe Black employees are paid less than Hispanic employees. One Hispanic stocker is paid \$11. Our night stocker has received several raises during his employment. I have more than 14 years with this employer and am earning \$10 per hour. I have not received a raise in 5</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <b>MAY 21, 2014</b> 	
Date <b>May 21, 2014</b> Charging Party Signature 		Date <b>May 21, 2014</b> Charging Party Signature 	

EEOC Form 5 (11/09)

**CHARGE OF DISCRIMINATION**

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Charge Presented To:

Agency(ies) Charge No(s):



FEPA



EEOC

460-2014-02659

**Texas Workforce Commission Civil Rights Division**

and EEOC

*State or local Agency, if any*

years. Also, younger (20's) Hispanic employees are promoted to managers. We are not given the opportunity to apply for vacant management positions.

Fernando only allows the Hispanic employees to order groceries for the store.

The Blacks employees are subjected to difference in treatment as compared to the Hispanic employees.

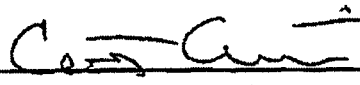
I believe I am being discriminated against based on my race (Black) and gender (caregiver), in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

May 21, 2014

Date



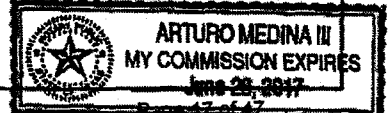
Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

460-2014-02659

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Cortez Austin**  
**19455 Plantation Cove**  
**Katy, TX 77449**

From: **Houston District Office**  
**Mickey Leland Building**  
**1919 Smith Street, 7th Floor**  
**Houston, TX 77002**



On behalf of person(s) aggrieved whose identity is  
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

**460-2014-02659**

**Patricia Palacios Ware,**  
**Investigator**

**(713) 651-4955**

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

Enclosures(s)

On behalf of the Commission

**Keith T. Hill,**  
**Acting District Director**

**9-29-15**

(Date Mailed)

cc:

**Ross Lewis, President**  
**LEWIS FOOD TOWN**  
**P. O. Box 4410**  
**Pasadena, TX 77502**

**TWC - CIVIL RIGHTS DIV.**  
**101 East 15th Street, Room 144-T**  
**Austin TX 78778-0001**